



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

July 30, 2010

Mr. Michael Kane
REDACTED

RE: FPPC No. 08/587; Michael Kane

Dear Mr. Kane:

The Fair Political Practices Commission (the "FPPC") enforces the provisions of the Political Reform Act (the "Act"),¹ found in Government Code section 81000, et seq. This letter is in response to an investigation begun against you by the FPPC based on complaint that alleged you were in violation of the Act's required disclosure and disqualification provisions. The complaint alleged you violated the Act through your participation on the Los Gatos Planning Commission vote to continue and then deny an application for an architecture and site permit for the "DeSantis Project" that was heard before the planning commission in August of 2008.

The FPPC has completed its investigation of this complaint and found that you did not violate the Act.

The Act provides that certain public officials, which includes planning commissioners, who receive a campaign contribution of \$250 or more from a participant within the twelve months prior to rendering a decision in a proceeding involving a license, permit or other entitlement for use, must disclose that fact on the record of the proceeding and not make, participate in making, or in any way attempt to use his or her official position to influence the decision. The public official must know, or have reason to know, that the participant has a financial interest in the decision. (Government Code Section 84308)

A "participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit or other entitlement for

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

use and who has a financial interest in the decision, as defined in Government Code Section 87103. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

Section 87103 provides that an official has a "financial interest" in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

- (a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- (b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- (c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.
- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- (e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$390 or more in value (for calendar year 2008) provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made from making, participating in making or influencing governmental decisions in which the official has a material financial interest.

For purposes of Government Codes Section 84308, a person is the "agent of a party to, or a participant in, a proceeding involving a license, permit or other entitlement for use only if he or she represents that person in connection with the proceeding involving the license, permit or other entitlement for use.

In this matter, you received campaign contributions from two individuals who were agents of the unincorporated group "Friends of the Hillside" (the group). The individuals were agents of the group because they represented the group before the planning commission or in public communications advocating for a position the group wanted the planning commission to take on the 'DeSantis Project."

There is insufficient evidence to establish whether the group fits within any of the "financial interest" categories of Section 87103. It is possible under some circumstances that, as

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the complaint alleges, the lawsuit being pursued by the group could result in a financial interest being established under Section 87103. However, it is unnecessary to consider this question. Even if it is presumed true that the rejection of the architecture and site permit could have a financial effect on the group because the group would save litigation costs by not having to further pursue litigation to stop the project from going forward, it is not reasonably foreseeable that the material financial effect would occur. This is because the votes you participated in, first to continue and then to deny the architectural and site permit ultimately did not stop the project from going forward, as the Los Gatos City Council overturned your decision to deny the permit on appeal. The lack of the decision being reasonably foreseeable in this context is particularly true since the City Council had previously approved the project through other votes, and this particular permit was limited to the architectural and site permit, not to the project as a whole.

The Commission publishes forms and manuals to facilitate compliance with the provisions of the Act and provides guidance regarding your obligations over the telephone and through written advice. If you need assistance, please call the Commission's Technical Assistance Division at 1-866-275-3772 or visit our website at www.fppc.ca.gov.

Please feel free to contact me with any questions you may have regarding this letter.

Sincerely,

REDACTED



✓ GARY S. WINUK
Chief, Enforcement Division

cc: Marc Blakeney